running from a stationary train;[11] a hemorrhage resulting in an attempt to extricate one's arms entangled in a nightgown over his head.[12] But opposite conclusions were reached in analogous cases, as a result of common-sense reasoning on the part of the juries, with proper instructions from the courts. In swinging Indian clubs, the insured ruptured a blood vessel, and recovery on the policy was allowed,[13] the court charging: "that if the deceased used the clubs for exercise in the ordinary way, and without the interference of any unusual circumstances, the injury was not accidental; but if there occurred any unforeseen accident or involuntary movement of the body (such as a slight twitch or turn) which in connection with the use of the clubs brought about the injury, then such means were accidental, and within the terms of the policy." On the same principle, recovery was had for blood-poisoning caused by the insured intentionally giving himself a hypodermic injecton;[14] and for the rupturing of the tympanum, following a dive into a swimming pool.[15]

The fair inference from the Pennsylvania cases is that the result determines whether the injury was accidental. "An accident is an event which takes place without one's foresight or expectation; an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and, therefore, not expected."[16]

M. G.

NEGLIGENCE—THE "RULE OF THE ROAD."—A recent case[1] raised the question of the rights and liabilities of drivers of vehicles on public streets. A wagon was proceeding along the left-hand side of a street, twenty feet wide. On the same side of the street there was a high board fence. The plaintiff, a boy of eleven years, was coming up behind the wagon on a bicycle, and started to pass between it and the fence on the left. As he was even with the front of the wagon, the horses swerved towards him; and before the driver could get them back, they had thrown the boy against the fence. The driver had not known that the boy was back of him, or that he was attempting to pass. The court affirmed a judgment for the plaintiff, upholding the trial judge, who had allowed the jury to say whether or not the conduct of the driver was negligent.

There were two points decided in the case. In the first place, the court had to consider whether negligence can be imputed from a violation of the so-called "Rule of the Road." The question was answered in the negative. This, it will be seen, is representative of

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[11] Southard v. Ins. Co., 34 Conn. 574 (1868).

[12] Smouse v. Ass'n., 118 Ia. 436 (1902).

[13] Lovelace v. Ass'n., 126 Mo. 104 (1894).

[14] Bailey v. Casualty Co., 8 N. Y. App. 127 (1896).

[15] Rodey v. Ins. Co., 3 N. M. 316 (1886).

[16] Ins. Co. v. Burrough, 69 Pa. 43 (1871); Pollock v. Ass'n., 102 Pa. 230 (1883).

[1] Hackitt v. Alamito Sanitary Dairy Co., 133 N. W. 227 (Neb., 1911).

the weight of authority. The authorities in England are confined to about a half-dozen short cases in the early part of the last century.[2] The law as contained in them seems to be that a breach of the rule of the road is not *per se* negligence. Thus, it was held, in Pluckwell v. Wilson,[3] that a person is not bound to keep to the customary side of the road, but that if he does not, he is bound to use more care and diligence, and to keep a better lookout than would be requisite, were he on the proper side. Again, in Wayde v. Lady Carr,[4] the court said: "In the crowded streets of a metropolis * * * situations and circumstances might frequently arise where a deviation from what is called the law of the road would be not only justifiable, but absolutely necessary." Of course, under some circumstances a violation of the rule of the road may mean the pursuance of a negligent course of conduct;[5] but the mere fact of the violation is no negligence. In America, where the custom is to keep on the right, and to pass a team in front on the left, the majority of courts likewise hold that a breach of the rule of the road does not, in itself, spell negligence. So it has been decided that driving on the left-hand side of the road is not actionable negligence,[6] nor contributory negligence.[7] The same is true of passing a team in front on the right.[8]

This, of course, does not mean that an observance of the customs of travelling is unnecessary. That is one of the many circumstances which the jury are to take into account in determining the question of negligence. The simple question is whether the driver is exercising the care required of him; and his position, relative to the middle of the road may be all-important.[9]

The second point decided by the court was, that though a driver is not bound to keep to the proper side, if he does not do so he must use more care and keep a better lookout to avoid collision than would be necessary on the proper side. This is a harking back to the decision of Pluckwell v. Wilson.[10] It is significant, however, to note that in the latter case it does not appear whether the two vehicles were going in the same or in opposite directions. This, of course, is an essential fact, as the duty of a driver to one coming towards him

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[2] 10 Mews' Eng. Case Law Dig., 46.

[3] 5 C. & P. 375 (1832).

[4] 2 Dow. & Ry. 255 (1822).

[5] An excellent example of this is the case of Leame v. Bray, 3 East 593 (1803). Here the sole evidence of the defendant's negligence was his driving on the wrong side of the road on a very dark night. Under these circumstances one who, while travelling in the opposite direction to the defendant, was run into by him, was allowed to recover.

[6] Rand v. Syms, 162 Mass. 163 (1894).

[7] Wood v. Boston Elevated Ry., 188 Mass. 161 (1905).

[8] Elenz v. Conrad, 123 Ia. 522 (1904); Foster v. Goddard, 40 Me. 54 (1855); Bolton v. Colder, 1 Watts 360 (Pa., 1832). Only these two instances of the rule of the road are dealt with here, as they are the only ones involved in the decision of the case.

[9] Meservey v. Lockett, 161 Mass. 332 (1894).

[10] *Supra.*

may not be the same as that owed to one coming behind him. It is but reasonable to demand of one driving on the left side of a street that he keep a very sharp lookout for vehicles coming towards him on the same side, and upon meeting them to turn out. But can it be expected that he keep an equally sharp lookout for vehicles coming up behind him? The additional care, suggested as incumbent on the driver on the left side, as to vehicles behind him, can consist of nothing but a constant turning around to see if another driver is about to, or desirous of, passing. Yet this might readily amount to negligence to drivers in front of him or at his side. Again, passing a team is, to a certain extent, a hazardous undertaking—certainly, at least, when the street is as narrow as it was in the principal case. It seems just, therefore, that he who undertakes such a manœuvre should act with the greatest care; and it is not evident that such passage has been rendered more dangerous by the front driver's being on the left rather than on the right side of the street. In a practical question like this, the advisability of a rule of law should be measured by its efficiency; and it is difficult to see how travelling is made more safe by throwing the burden of additional prudence on the driver in front rather than on the one in the rear.

The court cites only one case in support of this rule, and that is a lower court decision.[11] The prevailing view throws the peril on the party passing, regardless of the position of the driver in front.[12] Of course, when the driver in front is aware of the desire and intention of the driver in the rear to pass, he owes him a duty to exercise reasonable care not to injure him.[13] It seems, therefore, that the only ground upon which the court could rule that there was such evidence of negligence in the principal case as to warrant its being sent to the jury, was that the duty of the driver toward the plaintiff was so great, because of his presence on the left side, that his allowing the horses to swerve towards the fence, was a breach of it. This is open to serious criticism.

P. V. R. M.

[11] Lonergan v. Martin, 4 Misc. Rep. 624 (N. Y., 1893).

[12] St. Louis Bridge Co. v. Schaub, 29 Ill. App. 549 (1888); Avenno v. Hart, 25 La. Ann. 235 (1873); Altenlairch v. National Biscuit Co., 127 App. Div. 307 (N. Y., 1908). In Bierbach v. Goodyear Rubber Co., 15 Fed. 490 (1883), it was said that the law does not impose upon the driver of a vehicle in a crowded city thoroughfare the duty of giving a signal to the vehicles behind him of his intention to turn; but it is the duty of the driver in the rear of such vehicle to be on the lookout for such a deviation from the course by the driver in the advance. Although both parties are bound to use ordinary prudence and care, yet ordinary care on the part of the driver of a team following another team in the streets of a city may mean, in the circumstances in which the parties are placed, a higher degree of care than would be expected from the driver of the team in advance. The case of Young v. Cowden, 98 Tenn. 577 (1896) goes to the extent of saying that it is the duty of the driver of the hindmost of two vehicles proceeding in the same direction, who desires to pass the other, which is occupying the portion of the roadway to which he is entitled, to stop and give warning to the driver of that vehicle, so as to avoid a collision, and, not to attempt to pass unless he can do so safely.

[13] Breman v. Richardson, 38 App. Div. 463 (N. Y., 1899).